

# The Commonwealth of Massachusetts

## DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

---

Petition of Boston Edison Company and	)	
Commonwealth Electric Company for	)	
Approvals Relating to the Termination of	)	D.T.E. 04-61
Purchase Power Agreements with MASSPOWER.	)	

---

### HEARING OFFICER RULING ON PETITION TO INTERVENE AND AMENDED PETITION FOR LIMITED PARTICIPANT STATUS

September 30, 2004

#### I. INTRODUCTION

On July 7, 2004, Boston Edison Company and Commonwealth Electric Company ("Companies") filed a petition with the Department of Telecommunications and Energy ("Department") for approval of a termination agreement with MASSPOWER ("MASSPOWER Termination Agreement"), and approval of the related ratemaking treatment. The Companies have a total of three existing purchase power agreements ("PPAs") with MASSPOWER to be terminated by the MASSPOWER Termination Agreement. Under the existing PPAs, the Companies purchase electric energy products produced in a generation facility in Indian Orchard, Massachusetts ("MASSPOWER Unit").

Pursuant to notice issued August 12, 2004, petitions to intervene were timely-filed with the Department by MASSPOWER, the Massachusetts Municipal Wholesale Electric Company ("MMWEC"), and Cape Light Compact ("Cape Light"). At the public hearing on September 8, 2004, the Hearing Officer granted the petition to intervene of MASSPOWER. However, at the same public hearing, the Companies requested an opportunity to file a written objection to the petitions of MMWEC and Cape Light. The Hearing Officer set a date for written objections.

On September 13, 2004, MMWEC filed an amended petition for limited participant status in this proceeding. On September 14, 2004, MASSPOWER filed a Response to MMWEC's amended petition. The Companies did not file an objection to either Cape Light's petition, or MMWEC's amended petition.

#### II. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. 1, 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. 1, 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Id.

### III. MMWEC

#### A. MMWEC's Petition

In its amended petition for limited participant status, MMWEC states that it has a 7.86 percent entitlement in the output of the MASSPOWER Unit, under a PPA with MASSPOWER (MMWEC Amended Petition at 3). MMWEC further states that it sells the capacity and energy from this entitlement to six municipal light plants in Massachusetts (id.). According to MMWEC, if the Companies are allowed to terminate their PPAs with MASSPOWER, it is not clear whether or how MASSPOWER would be able to continue to operate the Indian Orchard facility, possibly affecting MASSPOWER's ability to continue to provide MMWEC's entitlement of this facility (id.). MMWEC concludes that because the Department's approval of the MASSPOWER Termination Agreement could affect MMWEC's rights under its PPA with MASSPOWER, MMWEC is substantially and specifically affected by this proceeding (id. at 4).

As a limited participant, MMWEC requests the right to file discovery and written comments, receive notices and filings, attend hearings, and submit briefs in this proceeding (id.).

#### B. Comments

MASSPOWER does not object to MMWEC's participation in this proceeding as a limited participant (MASSPOWER Response at 1). MASSPOWER's position is predicated on the "express understanding" that MMWEC's limited participant status does not confer party in interest standing and MMWEC would therefore have no appeal rights in this matter (id.). In addition, MASSPOWER does not object to MMWEC's

limited participation where that participation does not expand the scope of or otherwise delay this proceeding (id. at 2). MASSPOWER cautions that issues relating to MMWEC's contract with MASSPOWER and its entitlements thereunder are outside the scope of this proceeding (id.).

C. Analysis and Findings

The Hearing Officer grants MMWEC's amended petition, will allow MMWEC the right to participate by receiving all notices and filings, and filing briefs.<sup>1</sup> Regarding discovery, MASSPOWER may submit to the Hearing Officer written questions for consideration for inclusion as Department information requests, within the timeframe for issuance of discovery in this proceeding. The Hearing Officer will determine whether any such questions are within the scope of this proceeding and are beneficial to the development of a complete record in this proceeding.

The Hearing Officer notes that as a limited participant, MMWEC will not have appeal rights in this matter. See Robinson v. Department of Public Utilities, 416 Mass. 668, 671 (1993). In addition, as a limited participant, MMWEC must conform its participation to the scope of the proceeding. MMWEC's rights under its PPA with MASSPOWER are not the subject of this proceeding.

IV. CAPE LIGHT

A. Cape Light's Petition

Cape Light requests full party status in this proceeding (Cape Light Petition at 1). Cape Light states that it is a governmental aggregator, whose purpose is, among other things, to acquire the best market rate for electricity supply and transparent pricing, to provide equal sharing of economic savings based on current electric rates and/or cost of service ratemaking approved by the Department, and to generally advance the interests of consumers in a competitive electric supply market (id. at 2). According to Cape Light, decisions made by the Department in this proceeding will affect customers in its member municipalities (id. at 3). In addition, Cape Light states that it has a significant interest in the development of a robust competitive supply market, and, as the Department's decision in this proceeding could affect the development of a competitive supply market in Massachusetts, Cape Light is substantially and specifically affected by this proceeding (id.).

Cape Light proposes to seek to determine whether the Companies have established their entitlement to impose the proposed transition charges on ratepayers

---

1 MMWEC requests the right to attend procedural and public hearings. The evidentiary hearing to be held in this matter will be open to the public, and, therefore MMWEC may attend.

(id. at 4). Cape Light states that it may introduce evidence regarding the potential affect of the Companies' proposal on the customers in Cape Light's service territory and on the competitiveness of the electric supply market in Massachusetts (id. at 5).

B. Analysis and Findings

Department rules require that a petition to intervene demonstrate how a petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. § 1.03(1)(b). Cape Light's argument that the Department's decision will affect ratepaying customers in its service territory fails to demonstrate how its customers will be affected specifically; in other words, in a manner differently than the Commonwealth Electric Company's ("Commonwealth") other customers. Although Cape Light serves customers in its service area as an aggregator, and this arrangement is different than direct service by Commonwealth, Cape Light customers pay the same Transition Charge as other Commonwealth customers.<sup>2</sup> The Attorney General represents the interest of ratepayers in Department proceedings. See Boston Edison Company, D.T.E. 98-118, Interlocutory Order on Appeal of Hearing Officer Rulings Regarding Petitions to Intervene (March 19, 1999) (Petitioners fail to demonstrate that they would be affected any more than other customers of the Company, or that their interests are not otherwise adequately represented by the Attorney General). The Attorney General is a party to this proceeding; Cape Light does not argue why the Attorney General cannot adequately represent the interests of Commonwealth's customers within the Cape Light service area.

Cape Light also argues that it has a significant interest in the development of a competitive electric supply market, which may be affected by the Department's decisions in this proceeding. However, Cape Light provides no explanation regarding how this proceeding will specifically affect the competitive electric supply market. In addition, the scope of this proceeding is limited to an examination of the MASSPOWER Termination Agreement and the requested ratemaking treatment. As with other proceedings involving buyouts of purchase power agreements, this proceeding does not involve any particular examination of the competitive electric supply market. See, e.g., Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60 (2004); Western Massachusetts Electric Company, D.T.E. 01-99 (2002); Cambridge Electric Light Company, D.T.E. 01-94 (2002).

Accordingly, the Hearing Officer finds that Cape Light is not substantially and specifically affected by this proceeding and its petition to intervene is denied. However, the Hearing Officer grants Cape Light limited participant status, with rights to receive all notices and filings, and to file briefs.

---

2 The Transition Charge is a non-bypassable charge collected from all customers taking distribution service from an electric distribution company (e.g., Commonwealth).

V. RULING

The Amended Petition for Limited Participant Status of MMWEC is hereby granted. The Petition to Intervene of Cape Light is hereby denied. Cape Light is granted limited participant status.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by October 6, 2004. A copy of this Ruling must accompany any appeal. Responses to any appeal must be filed by October 8, 2004.

September 30, 2002  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Joan Foster Evans  
Hearing Officer

cc: Mary L. Cottrell, Secretary  
Andrew O. Kaplan, General Counsel  
Service List  
Staff as Assigned